

(7) At the conclusion of its review of the case, the Division shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Division shall constitute the recommendation of the Division. Such recommendation shall be promptly transmitted by the Chairman to the Division Chief, Waiver Review Division.

(8) The recommendation of the Division in any case reviewed by it shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner by the Division Chief, Waiver Review Division.

[58 FR 15196, Mar. 19, 1993; 58 FR 18305, Apr. 8, 1993; 58 FR 48448, Sept. 16, 1993; 60 FR 16787, 16788, April 3, 1995; 60 FR 53125, Oct. 12, 1995; 62 FR 19222, Apr. 21, 1997; 62 FR 28803, May 28, 1997. Redesignated and amended at 64 FR 54539, 54540, Oct. 7, 1999]

Subpart H—Transit Aliens

§ 41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the

United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

Subpart I—Fiance(e)s and Other Nonimmigrants

§ 41.81 Fiance(e) of a U.S. Citizen.

(a) *Petition requirement.* An alien is classifiable as a nonimmigrant fiance(e) under INA 101(a)(15)(K) if the consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by the U.S. citizen to confer nonimmigrant status as a fiance(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service.

(b) *Certification of legal capacity and intent to marry.* Upon receipt of a petition approved by INS and the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer shall grant the alien the nonimmigrant status accorded in the petition and shall determine the eligibility of the alien to receive a K-1 visa.

(c) *Eligibility as immigrant required.* The consular officer, insofar as practicable, shall determine the eligibility of an alien to receive a nonimmigrant visa under INA 101(a)(15)(K) as if the alien were an applicant for an immigrant visa. If the consular officer determines that the alien would be eligible, under INA 212 (a) and (e) and in all other respects to receive an immigrant visa, except the alien shall be exempt from the labor certification requirement of INA 212(a)(5), the officer may issue a nonimmigrant visa under this section.

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991]